IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 31ST JANUARY 2007 / 11TH MAGHA 1928

Crl.MC.No. 4049 of 2006()

CC.169/2006 of JUDL.MAGISTRATE OF FIRST CLASS, KAYAMKULAM

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PETITIONER: IST ACCUSED

SUDHARMA, AGED 42 YEARS,
W/O.OMANAKUTTAN, SARANYA BHAVAN,
KARUVETTUKUNNIL, CHIGOLI VILLAGE.

BY ADV. SRI.P.SREEKUMAR
SRI.K.S.MANU (PUNUKKONNOOR)

RESPONDENTS:

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1. BIJU, AGED 33 YEARS,
S/O.GOPALAKRISHNAN, MAMBALASSERIL VADAKKATHIL,
DEVIKULANGARA PUTHUPALLI.

2. THE SUB INSPECTOR OF POLICE,
KAREELAKULANGARA POLICE STATION.

3. STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY ADV. SRI.RASHEED C.NOORANAD
PUBLIC PROSECUTOR SMT. LATHA.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 31/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 4049 OF 2006

Dated this the 31st day of January, 2007

ORDER

The petitioner is the 1st accused in a prosecution under Secs.341, 323, 427, 294(b) and 506(ii) read with Sec.34 of the IPC. Altogether there are five accused persons. Cognizance has been taken against all the five accused persons. All, except the 4th accused, have already entered appearance. The 4th accused, even before receiving summons, had gone abroad and he is not available for appearance now, it is submitted.

2. The petitioner has come to this Court with a prayer that the prosecution initiated against her may be quashed invoking the powers under Sec.482 of the Cr.P.C.

3. What is the reason? The crux of the contention is that the allegations raised by the complainant are false. Against a relative of the complainant, the petitioner had filed a complaint on 22/12/05. F.I.R. has been registered. Investigation has been conducted. Cognizance has been

taken on 16/1/06. The present private complaint is seen filed on 16/1/06 about an alleged incident that had taken place on 22/12/05. The petitioner contends that the allegations are totally false and are raised only as a counter blast against the complaint raised by the petitioner against the relative of the respondent/complainant. In these circumstances, proceedings may be quashed, it is submitted.

4. The learned counsel for the petitioner further submits that the learned Magistrate had not exercised due care, caution and diligence before ordering summons to the accused persons including the petitioner. Records have been called for. The records reveal that in addition to the complaint, the learned Magistrate had the sworn statements of the complainant and two witnesses available. I have been taken through the sworn statements of the complainant and two witnesses.

5. Having considered all the relevant inputs, I am certainly of opinion that requisite care, caution and circumspection have not been employed by the learned Magistrate before directing that cognizance be taken. I shall carefully avoid any detailed discussion on merits. Suffice it to say that I have gone through the sworn statements of the

complainant and two witnesses. In fact, there is no specific allegation raised against the complicity of the individual accused. Altogether five accused persons are now forced to face trial. Without intending to delve deep into the allegation, I need only mention that sufficient care which ought to be employed at the threshold before issuing process to the accused has not been exercised by the learned Magistrate. I am, in these circumstances, satisfied that this would be an eminently fit case where cognizance taken already deserves to be set aside and the learned Magistrate must be directed to consider the complaint afresh giving the complainant an opportunity to examine/ re-examine himself and the other witnesses. After adverting to all such materials which may be made available before the learned Magistrate, the learned Magistrate shall again consider the question whether cognizance deserves to be taken against any or all the accused persons. After due and proper application of mind, a decision shall be taken by the learned Magistrate on that aspect.

6. In the result, this Crl.M.C. is allowed. The order passed by the learned Magistrate taking cognizance against all the accused persons (even though all the accused persons have

not come before this Court and only the petitioner has come before this Court, I am satisfied that such a direction is necessary considering the peculiar facts and circumstances of this case) is set aside. The learned Magistrate is directed to consider the complaint afresh and pass appropriate orders at the stage of Sec.203/204 of the Cr.P.C. giving the respondent complainant an opportunity to examine/re-examine himself and the other witnesses.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge